

Decisions of Interest

JULY 24, 2023

CRIMINAL

TRIAL COURTS

People v CS | July 7, 2023

DVSJA RESENTENCING GRANTED | INTERIM HEARING ON ELIGIBILITY

The defendant moved for resentencing under the DVSJA for her 2nd degree murder conviction. New York County Supreme Court granted the motion. In return for a rent-free home, the decedent had been asked to live with, and look after, the defendant due to her fragile mental health. Over several months, he subjected her to escalating sexual assault, culminating in her rape. Two months after that, she shot and killed the decedent upon his return to the apartment. While confined at a male prison, the defendant was subjected to sexual harassment and assaults, in part because she was a transgender woman. Now age 56, she had no prior criminal history. Following an interim eligibility hearing showing that the defendant's relationship with the decedent was intensely personal, the court found that she had been subjected to substantial physical, sexual, or psychological abuse perpetrated by a member of her household with whom she shared an intimate relationship. The defendant was originally sentenced to 20 years to life in prison, served 26 years in prison, and was out on parole. Because an additional period of parole supervision would be unduly harsh, she was resentenced to 15 years' incarceration plus 5 years of post-release supervision, thereby rescinding the remainder of her parole time. The Center for Appellate Litigation (Carola Beeney, of counsel) represented the defendant.

[People v CS](#)

People v Reid | July 7, 2023

CPL 440.10 | HEMPHILL RULE | RETROACTIVE

The defendant filed a CPL 440.10 motion seeking vacatur of his conviction for 2nd degree murder based on the recent SCOTUS decision in *People v Hemphill* (142 S Ct 681 [2022]), which overruled NY's *Reid* rule—named for this defendant (*see People v Reid*, 19 NY3d 382 [2012]). Albany County Court granted the motion, finding that *Hemphill* applied retroactively. NY courts generally do not apply new rules of criminal procedure retroactively when raised by collateral attack. But current constitutional standards vital to reliably determining guilt or innocence may be substituted for those in effect at the time of trial if a complete miscarriage of justice may otherwise occur. The purpose of the *Hemphill* rule is to ensure fundamental fairness, which directly impacts the reliability of the verdict—requiring retroactive application. The admission of a non-testifying

codefendant's confession here violated the defendant's right to confrontation. The defendant did not forfeit this right by "opening the door" and the error was not harmless. Bruce E. Knoll represented the defendant.

People v Hamlett | 2023 WL 4554666

MAPP/DUNAWAY | UNLAWFUL ARREST | EVIDENCE SUPPRESSED

The defendant moved to suppress cocaine recovered during a police search incident to his arrest. Queens County Criminal Court granted the motion. The NYPD officer lacked probable cause to arrest the defendant for trespassing in a NYCHA apartment building. During the officer's routine interior patrol of the building, he saw the defendant and another individual at the top of a sixth-floor stairwell which led to a "rooftop landing." An NYCHA sign posted in the lobby of the building stated that access to the roof landing was prohibited. But there were no signs or markings distinguishing the top of the stairwell as restricted or stating that it led to the rooftop, and the area was easily accessible to anyone in the building. A person's mere presence in a prohibited area does not necessarily give rise to probable cause of trespassing. Reasonable cause requires belief that the defendant knowingly entered or remained unlawfully in a restricted area. Queens Defenders (Gina Mitchell and Matthew Thomas, of counsel) represented the defendant.

[People v Hamlett \(2023 NY Slip Op 50717 \[U\]\)](#)

People v Davis | 2023 WL 4627601

DISCOVERY | IAB RECORDS | MOTION DENIED

The defendant challenged the People's COC and SOR as invalid and illusory based on the People's failure to disclose an officer's Internal Affairs Bureau (IAB) files marked exonerated or unfounded. Suffolk County District Court denied the motion. The People's obligation to turn over evidence tending to impeach a police witness under CPL 245.20 (1) (k) does not mandate the disclosure of unfounded or unsubstantiated IAB files. In questioning a witness's credibility, alleged prior acts of misconduct cannot be proven through extrinsic evidence.

[People v Davis \(2023 NY Slip Op 23209\)](#)

People v Wright | 2023 WL 4627514

SIROIS HEARING | OUT-OF-COURT STATEMENTS | ADMISSIBLE

The People requested a *Sirois* hearing after the complaining witness suddenly became uncooperative. Suffolk County Supreme Court declared the witness's out-of-court statements admissible at trial. The People proved, by clear and convincing evidence, that the defendant exerted coercive control over the witness that led to her unavailability. Jail calls demonstrated that the defendant and his associate used threats and emotional manipulation to convince the witness to stop cooperating with the prosecution and police.

[People v Wright \(2023 NY Slip Op 50729 \[U\]\)](#)

OTHER STATE COURTS

Rowe v Raoul | July 18, 2023

ILLINOIS BAIL REFORM | CONSTITUTIONAL

The defendants appealed from a Kankakee County Circuit Court order that granted summary judgment to the plaintiffs on the ground that certain provisions of the SAFE-T Act, which reformed the statutory framework for pretrial release and abolished monetary bail in Illinois, violated the State Constitution. The Illinois Supreme Court reversed. The Illinois Constitution of 1970 did not mandate monetary bail. The bail clause does not include the term “monetary bail”; its inclusion of “sufficient sureties” is not limited to sufficient monetary sureties; and monetary bail was all but unknown at the time its historical antecedent—the 1818 Constitution—was drafted. The Act’s pretrial release provisions set forth procedures commensurate with the balance required under the constitution between the individual rights of the accused and those of the crime victims.

[Rowe v Raoul \(2023 IL 12948\)](#)

State v Labrecque | July 7, 2023

VERMONT SPEEDY TRIAL | COVID DELAY | REVERSED

The State appealed from the criminal division’s order granting the defendant’s motion to dismiss on speedy trial grounds. The Vermont Supreme Court reversed. The defendant was detained pretrial from January 2018 until May 2022. While the overall delay was significant and the defendant consistently asserted his speedy trial rights, the time between charging and trial was compellingly accounted for. A pre-COVID period of 20 months constituted ordinary pretrial delay consistent with the complex and serious nature of the sexual assault charges. A 24-month delay caused by the pandemic, although attributable to the State, was non-negligent and served the important purpose of protecting public health. The defendant suffered no actual prejudice, nor was he entitled to a presumption of substantive prejudice.

[State v Labrecque \(2023 VT 36\)](#)

FAMILY

TRIAL COURTS

People v N.N. | 2023 WL 4443141

IDV COURT | UCCJEA | TEMPORARY EMERGENCY JURISDICTION

The mother fled from Florida to New York and filed petitions in Kings County Family Court seeking custody of her two children and a temporary order of protection (TOP) against the father because of domestic violence. An ex parte TOP was issued. The mother’s petitions, subsequent criminal charges against both parents, and family court petitions filed by the father were transferred to Kings County Integrated Domestic Violence (IDV) Court. A NY court may exercise temporary emergency jurisdiction (TEJ) if needed to protect children present in NY, or a parent, in an emergency. A divorce action was pending in FL, but no custody proceedings had been commenced. Thus, IDV court had

significant discretion to determine the duration of its jurisdiction. Given the safety concerns for the mother and children, the IDV court resources to monitor the case, and the concern that the father was trying to punish the mother by forcing a jurisdictional issue, IDV court retained temporary jurisdiction over the children and would hold an inter-jurisdictional conference with the FL court.

[People v N.N. \(2023 NY Slip Op 23203\)](#)

***Matter of Maherly M. v Kaleb G.* | 2021 WL 11637294**

GUARDIANSHIP | PARENT OPPOSITION | CUSTODY TO PARENT

The petitioner sought guardianship of her sister's three surviving children after her sister and niece were murdered by the sister's boyfriend. The three children all had different fathers; the guardianship petition was resolved by the parties as to two of the children. The father of the third child was incarcerated at the time and filed a petition for custody and visitation. After his release, Bronx County Family Court conducted an extraordinary circumstances hearing. Extraordinary circumstances were found, and a best interest hearing was held. Family Court granted sole legal and primary physical custody to the father and visitation to the petitioner, finding that the father was better able than the petitioner to put the child's interests ahead of his own. The child had developed a strong relationship with the father, his wife, and their children, yet the petitioner often did not notify or include the father in matters related to the child, such as therapy sessions and school activities. Elizabeth Posse represented the father.

[Matter of Maherly M. v Kaleb G. \(2021 NY Slip Op 51314\[U\]\)](#)

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